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BY THE HOUSE OF DELEGATES,

January 14th, 1850.

Read and ordered to be printed.

REPORT

OF THE

MAJORITY OF THE SELECT COMMITTEE

ON THE

CONSTITUTION.

REPORT.

The undersigned, a majority of the committee appointed to take into consideration the expediency of calling a convention to reform the Constitution of this State, and to frame a bill for the assembling thereof, respectfully report:

After giving to the subject the best consideration they were able to bestow, they have determined to recommend the assembling of a conventien, in the manner prescribed by the bill subjoined as a portion of this report.

They are aware that the whole question referred to them by the House, has been at different periods the subject of grave deliberation: and that hitherto all efforts to secure the desired object, have been utterly fruitless. In the report, which they have the honor to make, they might content themselves with the subordinate duty of again commending to the attention of the House the views submitted to its notice by the advocates of reform in preceding legislatures. But, as it is desirable that the fairest opportunity should be afforded for discussing the question of reform at the present session, they have deemed it just and expedient to state in the fullest manner the reasons which have inclined them to submit the bill, reported herewith, to the consideration of the House.

At December session, 1847, the majority of the committee charged with the examination of the proposals then made for reform, in the conclusion of their report deprecated the idea of agitating a question of such moment, when the State was involved in financial embarrassments of the most serious character. They respectfully asked that the whole discussion might be postponed to a period when it could exercise no injurious influence upon the credit of the commonwealth. The strenuous and able appeal then made to the discretion of the House was heard, and whether for this reason only, or for others of a more particular character, the bills framed for the purpose of calling a convention were all rejected.

Since that period the wise and temperate management of our treasury, and the cheerful acquiescence of the whole community in

the system of taxation, rendered necessary by the indebtedness of the State, have extricated the public credit from its imminent peril. We can now, at least, calmly and deliberately survey our condition, unembarrassed by the fear of general insolvency, and without the apprehension that a change contemplated in the organization of our government, will disturb the general confidence in our solvency and honor.

They know that the opponents of a convention have frequently urged that the advocates of reform were unwilling to submit a particular account of the defects existing in the present system; and have from thence drawn the argument that popular favor was more aimed at in the movement, than any substantial benefit to the State. The undersigned think that this reproach is to the last degree unjust. If they belonged to a committee on the Constitution, organized for the single purpose of considering the various defects, which are alleged to exist in that instrument, it might be well urged that they ought to express in detail their opinions on the several reforms commended to their notice. But it should be remembered that they are not a body constituted for the purpose of taking into consideration particular reforms. The very end which they desire to accomplish by the assembling of a convention is a free and unembarrassed inquiry into our existing institutions. If there were only a few certain and manifest defects, upon which the public were well agreed, they frankly admit that the assembing of a convention would be an unnecessary measure. The occasion for a step, which passes beyond the common bounds of legislation, arises from the number, variety and conflicting character of the changes which are demanded. If these, or the larger number of them, were trivial in their nature, the undersigned would shrink from the responsibility of invoking a solemn convention to decide upon their merits. But, it is well known, that public opinion is divided upon those portions of our present Constitution, which underlie and sustain the whole fabric.

The undersigned would respectfully insist, that a concurrence of opinion with regard to particular reforms, is not to be looked for or expected. A constitution may exhibit material defects to the experience of one man, which are matters of mere speculation to another. Neighborhoods, whose necessities require a large number of officers appointed by the Executive, feel a choice, which is in derogation of their interest, to be a serious calamity: while localities, which do not call for the employment of such agents, are insensible to the inconveniences which such appointments occasion, and careless as to the remedy. The same remark might be applied to every species of State machinery. The situation of no two districts is so identical, that the same law bears equally upon both. What is a galling burden to one, is an inconsiderable evil to another.

When the constitution was formed, it was, in the opinion of the undersigned, as just and equitable an instrument, as the experience of that time, enabled honest and patriotic men, to

frame. No section of the State had a right or reason to complain. And even if it exhibited some imperfections in theory, it was so far an improvement upon the arbitrary system of our English inheritance, that it were ingratitude to quarrel with defects, which the experience of the world afforded little opportunity for detecting. But the course of years has altered those circumstances, which made the constitution of 1776, a model among the creations of our sister States. Changes in the current of population, growth of new interests, larger experience of business, have demonstrated that the old constitution, though an admirable nursery for greatness, is no proper theatre for the development of the growing energies of the State. At first, it was a small, compact, well contrived system of barriers, where, shut in by safe restraints, the infant State, newly released from tutelage, exercised its maturing strength in safety. Enlargements however, were soon needed, and it is not saying too much, when we declare, that the compact, well proportioned, but confined area has not always experienced the supervising care of skilful architects in the alterations which have been made.

The great difficulty which exists in reforming the constitution is, that it cannot be effected without a new compromise between the local interests which are concerned therein. That compromise, the Legislature is in no position to effect. Its members are not sent here, as the best representatives of local interests. The unhappy extension of party dominion over our State affairs, with which it has no natural concern, prevents us from considering county delegations as the undoubted representatives of county interests, as they ought in principle to be. However material it may be, when the election of a Senator of the United States is to be decided, that one party or the other should be in the majority in the far greater number of cases, the feelings and principles which control the selection of the Delegates and State Senators, have no concern whatever with our local interests. Yet to a body thus selected, it is proposed to leave the sole and ultimate decision of questions which are entirely foreign to the general policy of the United States.

This evil is one, the existence of which all parties will confess. While therefore, the undersigned admit that the constitution, as it now stands, wisely provides that the legislature shall have the power to change the method of government, provided in so doing it follows the course therein prescribed, because of the inconvenience and peril even of summoning conventions of the people upon trivial occasions, they respectfully suggest that the legislature is in reason and common sense, not the authority to which organic changes ought to be exclusively referred.

The undersigned, however, will not occupy the time of the House by general arguments upon the fitness of a convention to make such reforms, as may be needful in the present Constitution of Maryland. The bill, which they have reported, provides for the taking of the votes of the people throughout the State upon

the single question of the necessity of a convention. If they are in error in their estimate of the public sense upon this subject, the ballot taken will correct the mistake, and the trifling expense to which the State may have been subjected, will be more than repaid by the profound tranquillity ensuing upon such a decision. If, on the other hand, the majority of votes shall determine that a convention is needful, it will matter little that the minority differs in opinion, or deems the present order of things most advantageous, provided the form of government, under which we live, does not interpose an impassable obstacle to the gratification of the general desire.

The undersigned are of opinon, therefore, that the questions which are properly before the legislature for decision are—first, do the people of the State think that there exist such defects in our present form of government, as render its reconstruction advisable; and secondly—if so, can they legally be assembled in convention by the act of the legislature, in the manner prescribed in the bill submitted herewith.

The undersigned entertain a consciencious opinion, that the majority of the people of this State, are in favor of the measure contemplated by the bill which they present. But as their information must of necessity be conjectural only, they have discharged their duty to the people and to the State, by providing that a vote shall be taken with regard thereto, before the serious responsibility of invoking a convention is assumed. They leave the decision of this necessity to those whom it chiefly concerns.

But assuming for the present, that the majority of the voters in the State are in favor of the convention, provided for in the bill, the undersigned would respectfully ask, with what reason the legislature can oppose itself to this desire. It is quite true that as at present constituted, it represents a minority of the voters in the State and that the distribution of delegates follows an arbitrary rule, which is dependent neither upon territory or population. This circumstance would incline the undersigned to believe, were they in ignorance of the early history of the State, that there was some principle existing in its constitution at variance with the general rule, that government is designed for the greatest good of the greatest number, or some compact by force of which no change could be effected in the constitution itself, except in the manner provided for in that instrument, without the violation of private, or of local rights, of a character too sacred to be rudely disturbed.

The undersigned have no disposition to convert their report into an inquiry of greater length, or detail, than the examination of the subject referred to their care propely demands. But the committee, which reported in 1847, unfavorably to a proposition, similar in many respects to that submitted to your body, placed upon the records of the legislature views and arguments, which, if historically or legally correct, would leave no other remedy to the majority of the people in this State, should they demand a convention, than a revolution. Such a contingency the undersigned

do not imagine will ever arise, whether the bill which, they report be passed by this, or any succeeding legislature, or not. The defects existing in the present constitution are indeed believed to be many in number and of serious magnitude, but they would not, in the opinion of the undersigned, justify any proceeding that might place in danger the integrity and peace of the State, or diminish that respect for institutions legally ordained, which is the only safe basis of public virtue and tranquillity. The undersigned, in the performance of their duty, address themselves only to the good sense, candor and fair dealing of the House, satisfied that their opinions will receive from that tribunal a patient hearing, and ultimately, an equitable decision.

The undersigned think that the chief difficulty, in which this question is involved, arises from the fact that the historical information, lying within our reach, is overlooked. They will therefore briefly remark upon some of the peculiarities of the proprietary government, under which the affairs of Maryland were administered from 1632 to the beginning of the Revolutionary War.

The large character of the grant to Cæcilius Calvert has frequently been noticed. The undersigned refer to it at the present time, for the purpose of discussing the power, conferred by the seventh section upon the Lord Proprietor, of enacting laws of every description, whether relating to the public weal, or to the affairs of individuals, with the advice, assent and approbation of the freemen of the province, or the greater part of them, or of their delegates or deputies; who were to be called together for the framing of laws, as often as need should require. The undersigned do not intend to revive from the oblivion, in which they have long slumbered, the discussions of the question, whether it was intended by the Crown, that the freemen of the province should possess the right of advising with the proprietor only, or whether they by the true interpretation of the grant, were entitled to legislate jointly with him. It is sufficient for their purpose to show that this right of a voice in legislation, if it existed at all, was the right of the people of the province, without regard to local divisions of its territory. Under this system, and subject to this check and restraint only, the proprietary government went into operation.

It can easily be seen that, but for the provision made in the charter to Cæcilius Calvert, the freemen of the State would have had no protection from an arbitary government, except what was furnished by the interference of the crown. This authority was somewhat too far removed to operate as an effectual restraint. In order, therefore, that the check imposed upon the proprietary government should amount to anything, we, judging at this day, are willing to give the most liberal construction to the words of the charter and to admit that the freemen of the province were entitled to exercise a joint legislative power with the Proprietary.

It is not necessary certainly to prove that, "by the freemen of the province," the charter meant to confer an equal right upon all who could claim this distinction, whatever might be their geogra-

phical position in the colony. Internal boundaries had not then been marked out. The general character of the provision in question, is further shewn by the terms of the eighth article, which taking into consideration the obvious difficulty of collecting so large and widely scattered a population, recognises, incidentally, the right of differerent portions of the community, in case of sudden accident, or in great emergencies, to send delegates, or deputies, in their stead. In such cases also, and indeed in all, for the words of the grant are capable of so large an interpretation, that it is difficult to say in what instance the Lord Proprietor would have been compelled to take the advice of the freemen of the province, he was empowered to pass ordinances of all kinds whatsoever, which were to be of binding force, there being no check upon this legislation, saving the very uncertain reservation, that it should be conformable to reason, agreeable to the laws and statutes of England, and should not interfere with the life, liberty, or vested rights of any person.

Before the year 1650, it is known that the proprietary government exercised the exclusive right of convening assemblies, and of dissolving them at pleasure, and that it determined in what manner they should be convened. The freemen were sometimes directed to attend in person, or by proxy, sometimes by delegates or deputies and sometimes there was given only a general direction to attend. (McMahon's Maryland p. 146.) There were then only two counties in existence,—St. Mary's, and the Isle of Kent county. So it will be apparent that the Assembly convened in this general manner, was not regarded as representing those two districts, but as composing, theoretically at least, the whole body of the freemen of the province.

It is not known at what precise period the General Assembly of the freemen of the province, either in person, or by delegates, was abandoned. In the year 1650, however, or shortly before, the General Assembly was divided into two Houses, called "the Upper and Lower Houses," and thenceforward the style of the laws was—"by the Lord Proprietary, with the assent of the Upper and Lower Houses" One of the earliest, and the most material to this inquiry, of the enactments passed by this body, was that settling the constitution of the two bodies upon a certain basis, during the session of the Assembly, in which the act was passed, and providing for its division into two separate houses. The governor, his secretary and council, were to constitute the Upper House, and the burgesses for St. Mary's county, the Isle of Kent, and the District called Providence, were to compose the Lower House. The general attendance of the freemen of the province was thus dispensed with.

The Lower House was represented by burgesses from different hundreds in the two counties, and from the settlement of Providence. It is probable from the fact that St. Mary's hundred sent two burgesses and St. Inigo's one, Kent Island one, and Providence two, that the population of these hundreds determined the

difference in their representation. It is at least indisputable that the members of the Lower House were not returned by each of the two counties then composing the greater part of the Province, but by lesser and abitrary divisions, known as hundreds, and borrowed from the ancient police regulations of England.

In 1658, when Fendall was Governor, the Lower House, with the connivance of that officer, denied the authority of the Upper House, to sit as a separate body, and invited it to join with them in the composition of a General Assembly. The council refused, but Fendall accepting the offer, the Upper House was dissolved, and the business of legislation was conducted by the Lower House sitting alone. This state of things lasted until the surrender of the colony by the parliamentary commissioners, and then the old usage of the Upper and Lower Houses was revived.

In 1658, the right of appearing in person, or by proxy, wholly ceased. (McMahon's Maryland, p. 147.) The undersigned are not able to say at what precise period the hundreds of the two counties, and that part of the province then called Providence, ceased to send their delegates to the Lower House. It appears that the assembly convened in 1650 was formed upon the old basis. From 1658, however, until 1681, it seems that delegates were elected by each county, and the number to be chosen by each was regulated by the warrant of the Executive. During this period, however, it appears that the counties were authorised to send two, three, or four delegates. In 1681, the number of delegates was reduced to two for each county; and a general rule as to their qualification, and the manner of electing them, was prescribed. (McMahon's Maryland, p. 147.) The constitution of the lower house remained as thus established until 1689, when the province fell under the administration of the crown.

Laws were passed in 1692, 1704, 1708, and 1715, settling the organization of the lower house; but they are all contained and amplified, the undersigned believe, in the law of 1716, ch. xi. By this enactment, each county in the province was authorised to elect four delegates to the lower house. At this time, Saint Mary's, Kent, Anne Arundel, Calvert, Charles, Baltimore, Talbot, Somerset, Dorchester, Cecil, Prince George's, and Queen Anne's counties were in existence. Provision was also made, in the eighth section of the same act, that counties, to be thereafter created, should be entitled to four delegates each, and that the cities, or boroughs, should each have two delegates. By which it will appear that the lower house, as then constituted, was not regarded as the representative of the counties, as corporate existences, so to speak, but of the people chancing to be included within those local divisions, since the cities and boroughs within them were to have their separate delegates in the General Assembly. It more clearly appears, from the language of the second section of the act of 1716, that the provision of delegates from the counties was regarded not as their separate right, but only as a convenient mode of distribution. It was there recommended, that the safest rule to

follow, in the constitution of the lower house, was the precedent set in the parliaments of Great Britain. It is well known that the witenagemote, which was the assembly of freemen under the Saxon Kings, resembled in some respects the representation by hundeds, which first existed in this Province, just as the change into representation by counties and cities, afterwards resembled the English Parliament. The arbitrary power of issuing writs to summon members, has its likeness in the prerogative of the earlier Kings of England of Norman descent, at least until the days of King John. It is submitted, that the county delegates, when so chosen, occupied no other relation to their respective counties, nor those counties any other political rank, than that possessed by their English prototypes. They were local divisions, contrived for purposes of municipal government and domestic police, not small regalities, whose union gave strength to the whole system. Their powers were concessions from the general authority, not reservations of any thing belonging of right to themselves.

If there had been any other interpretation existing at that day, of the true relation of the constituent parts of the Province to the Government, they were certainly wise in suppressing its expression. By the fourteenth article of the charter, the Proprietor, and of course, also the Crown, after the surrender of the rights of the Proprietary, was authorised to erect towns into boroughs, and boroughs into cities; which power, under the law of 1716, would have enabled the crown officer to control, at pleasure, the deliberations of the whole body, and would have made the independent, self-subsisting power of the counties, even if they had possessed it, a mere nullity.

The undersigned have dwelt at some length upon this question, because it has been seriously said, that the constitution, agreed to in 1776, was a compact between these petty sovereignties. They respectfully urge, on the other hand, that the counties were only local divisions, created for municipal convenience and purposes of internal police, or for the same reasons that towns were elevated into boroughs and cities, viz: in order that the acquisition of a corporate character might give them the legal powers necessary to the management of their internal concerns.

So stood the question until the Revolution. It is material to examine the steps taken at the withdrawal from the allegiance to the crown. At the convention held in 1775, the freeholders of each county in the Province, qualified by law to vote for burgesses, were empowered to vote for a committee of observation from the different counties and cities, which was to be composed of twenty-four from St. Mary's, thirty-two from Charles, fifteen from Calvert, thirty-three from Prince George's, and so on, varying in number in every county of the State, but following, as nearly as we can tell, not so much an arbitrary rule as some proportion of population; and qualified apparently, by the exposure of the district to the chances of war.

So, too, in the convention which met in Annapolis, on the 21st

June 1776, it was resolved, on July 3rd, that a convention should be elected to form a new government "by the authority of the people only." A resolution also fixed the proportion of delegates, who should compose it. Frederick was then the most populous county in the State. It was allowed *four* delegates from each of the *three* districts into which it was divided. Can it be pretended that the counties stood upon a political equality, when Frederick had twelve delegates, and Calvert, Charles, St. Mary's and the others, only four each? And it will be found by reference to the proceedings of the Convention, held in August 1776, that there were actually present at its opening, eleven delegates from Frederick county. It will be seen, also, that in this convention, the vote was not taken by counties, but that the delegates divided freely on the one side or the other, as their several opinions inclined them.

This circumstance, satisfies the undersigned that the convention which formed the constitution of this State, was not a convention of the several counties, for in that case the vote would have been taken by counties, but that it was assembled by the authority of the people of the Province, acting within their usual municipal limits. If the different representation, accorded to Frederick county, did not satisfy them of this fact, the vote upon all propositions in the convention would conclusively establish it. They respectfully submit, therefore, that the constitution and form of government, agreed upon by that convention, was no more a compact between the shores, or counties, than any law now passed by your honorable body, could be so regarded. It is the constitution of the people of this State, who formed it through delegates, elected in such a manner, as was suggested to them by the convenient nature of their local divisions.

Having expressed, as briefly as the nature of case permits, their interpretation of the organic nature of the convention which formed the bill of rights and constitution of the State, the undersigned will now examine in what way the said constitution can be legally changed, or altered.

They would respectfully inquire, what would be the position of the Legislature of this State, if the forty-second article of the bill of rights, and the fifty-ninth article of the constitution, were not parts of those instruments respectively. There is no doubt that the Legislature is the agent of the people, exercising powers confided to its care by the grant which the constitution contains. If we accept the construction of the committee, who reported in 1847, against a convention, the Legislature of this State can do nothing except what it is specially empowered to undertake. It could, therefore, in such event, whatever might have been the defects in the instrument, no more have amended it, than one receiving and acting under a power of attorney, can alter, qualify, or enlarge, by his own will, the grant of authority conferred upon him.

It is certain, then, that the 59th article, whatever may have been its effect in other particulars, operated as an enlargement of the

powers of the Legislature, and not as a restriction thereon. The provision that the alteration, which it might enact, should be again enacted by a succeeding Legislature, was a qualification imposed upon this enlarged grant; being manifestly designed as a mode of testing, at the intervening election, the sense of the people upon the proposed amendment. The undersigned, therefore, say, that if the declaration of rights had not contained the 42nd article, or the constitution the 59th, the people would have been compelled to have assembled in convention for the purpose of effecting any change. It seems to them that the true construction of these clauses, goes no further than the prevention of this necessity.—They do not impede the assembling of the people, if the necessity for such assembling should arise, for the purpose of reforming the old, or creating a new instrument.

The undersigned, would further observe, that the declaration of rights and the constitution of the State, are of equal sanctity, and are to be construed together as parts of the same instrument. It is proper, then, to consider the 42nd article of the bill of rights, with the 59th article of the constitution. The first named, says: "This declaration of rights, or the form of government to be established by this convention, or any part of either of them, ought not to be altered, changed or abolished *by the Legislature of this State*, but in such manner as this convention shall prescribe and direct."

Now, what is the meaning of this clause? The undersigned, frankly confess, that they can perceive but one. Is it not perfectly clear that it was intended to prevent *the Legislature* from exercising the power of arbitrary alteration? Otherwise, why were the words "by the Legislature" inserted at all? It is true, that according to the interpretation of the undersigned, the whole article is needless; but it was doubtless inserted out of abundant caution. Its presence, however, is highly valuable as an element of interpretation, and as such, the undersigned would employ it. Suppose that the words in question had been omitted. There would have been presented the singular spectacle of a people, who had exercised the right of overthrowing one form of government, partially elected by themselves, establishing another on such a basis, as placed it beyond their direct control. Now, suppose that the 59th article was absent also, the Legislature could not alter the constitution, because they would not then have been empowered so to do; and, according to the theory of the report of 1847, the people could not, because there was no mode provided for it, except by the process of a Revolution. Is it not at once apparent from this view, that the 59th article is not a limitation, but a grant of power, restricted only by that portion which relates to the Eastern Shore? In fine, had the words "by the Legislature" been absent from the 42d article of the bill of rights, the convention would have by that act, have conferred all power over the constitution without check or limit, upon the Legislature. Had the 59th

article been absent, no change, whatever, could have been made in the constitution, except by revolution.

There is a rule in physics, which very well applies to subjects of this description. We can better judge the effect of a force, by observing its withdrawal, than by considering its presence as part of an aggregate number. If the words "by the Legislature" were absent from the 42nd article of the bill of rights, would it mean the same thing, as when they were present? That convention was then demonstrating that it had power to alter the old form of government, and it assumed to act upon a legal organization. If the meaning had been the same without, as with the words in question, it would have operated as a denial upon the part of a convention assembled as that was, of its own legality, because it had assumed, without a verbal authority or sealed commission, to change the form of government. But the passage is not reduced to this absurdity. The common principles of construction, require that it should have a meaning, and that meaning lies upon the surface. The article provided that no alteration should be made "by the Legislature," except as thereafter directed. Having placed a restraint upon this body, the creation of its will, it left the great sum of popular rights where it found them, for the reason, among others, that it had no power to control them by an absolute inhibition.

Applying the same principal to the 59th article, we see, that if it were absent, the Legislature could not amend the constitution at all. Being present, the only effect is the precise converse of this, viz: that the Legislature can amend it in the manner prescribed. The general words, "this form of government, and the declaration of rights and no part thereof shall be altered, changed or abolished, unless a bill so to alter, change or abolish, shall pass the General Assembly, and be published at least three months before a new election, and shall be confirmed by the General Assembly after a new election of delegates, in the first session after such new election; Provided, that nothing in this form of government, which relates to the Eastern Shore particularly, shall at any time hereafter be altered, unless for the alteration and confirmation thereof, at least two thirds of all the members of each branch of the General Assembly shall concur,"—must be construed by all that relate to them in the preceding parts of both instruments. The words "by the Legislature," in the 42nd article of the bill of rights, thus acquire their full sense and signification. The 59th article is the prescription of the only mode in which the Legislature can exercise the power impliedly given to it by the 42nd article of the bill of rights.

The undersigned, therefore, conclude that the 42nd article in the bill of rights, was intended to restrain the Legislature from acting, except in the manner prescribed by the constitution; and that the the 59th article of the Constitution was intended to direct the Legislature in the mode of exercising the power contemplated in the bill of rights, as forming a part of its authority.

If, then, the construction of the undersigned is correct, the proposition to assemble a convention, stands precisely upon the same ground as it would occupy, if the forty second article of the bill of rights, and the fifty ninth article of the constitution, were absent from those instruments respectively. The only legislative body in the world, where history is old enough to afford us information upon essential points of constitutional law, is the British Parliament. Yet the organic nature of this body, is so different from that of our Legislature, that we are apt to fall into serious error when we make comparisons.

The Parliament is, in theory, composed of King, Lords and Commons. It is a *representation* of these, however, by the respective members in that body. The legal consequence is, the old maxim of the omnipotence of Parliament. All parties being there represented, as integral divisions of the State, the laws which are ordained by that Assembly are not subject to any restraint whatever. The most remarkable instance afforded of the application of this theory, was the convertion, by its own act, of the Triennial into Septennial Parliaments. In such a state of things, there is no power remaining with the people. The authority of Parliament is not a concession of rights, but a compromise and adjustment of conflicting interests. Any assertion, therefore, of rights inconsistent with the entire dominion which it assumes, is a revolutionary movement.

But, in a case where the Legislative power is exercised not by representation, to speak strictly, but by delegation, there exist two modes of altering, or controlling the organization of the government. The first is, by revolution,—the second is, by revocation. When the authority to alter and amend laws, or to change an existing system, is exclusively the perogative of any class, or body of men, however composed, no other class, or body, can assert their general rights, as members of society at large, except by *Revolution*. Even if such body or class, should chance to be very largely in the majority of the whole people, their want of *legal* rights, except as subject powers, would leave them no resort except the complete, or partial, overthrow of the fabric of government. In so doing, they would assert their *human* rights, perhaps, but would undoubtedly infringe upon the *legal* powers of those who had hitherto held them in subjection. In a word, it must be remembered, that under the English constitution, popular rights are in the main, concessions of authority, not reservations of power. The advocates of change may hold a different language, but the legislation of England, from William the Conqueror down to Charles the first, indicates not so much the restoration of popular rights to their ancient legal boundaries, as their gradual encroachment upon the narrow and arbitrary limits of a system, in which they were little considered.

Our constitution, on the other hand, is a system of *delegated* powers; and the right of sovereignty remains in the people of the State, without regard to local divisions. In this man-

ner only can the first resolution of the convention of the 21st, June, 1776, be construed, even if it were necessary to appeal to the instrument for so obvious a truth. The legislature possesses delegated powers, for the reason urged by the committee who reported against a convention in 1847, viz: that its duties are *defined*. For we presume that it is not seriously urged that the powers given to the legislature, amount to such a compact between the popular sovereignty and itself as cannot be legally violated. In any interpretation there is no compact with the legislature. It is the creature of the compact itself,—the agent, indeed, constituted by the contracting parties to carry out the terms of their agreement. If then it is no party to the compact, and possesses only delegated powers, are those powers revocable by the contracting parties? The undersigned have no difficulty in assenting to so plain a proposition.

The undersigned would next inquire, who are these contracting parties. The question is answered by a recurrence to the views they have already submitted. They were the people of the State, assembled in convention by representatives sent from the several portions of the State.

The convention of the 21st June, 1776, was so appointed, as has been already mentioned. It is true that the strict rule of population was not followed; but it is certain that it entered into calculation. The representation allowed to Frederick county proves this, and it is further demonstrated by the provision made that the representation allowed Annapolis and Baltimore towns, should not continue, if the population of those towns respectively became materially less.

The next inquiry is, how can the contracting parties revoke it? If they are the counties and cities, there is no mode in which they can express their act of revocation, unless they vote as units, or according to population. Vote as units, however, they cannot, because there is no pretence that such a confederacy exists, nor was such a manner of voting ever practised in the convention. It only remains then that the revocation of the authority conferred by the constitution, should be made by those stated in the convention of the 21st June, 1776, to be possessed of authority—the people of the State.

The next question for settlement is, how can the people of the State, exercise this right of revocation? Here, it is first material to know, if they desire to exercise it. This, the bill provides for, by directing that the vote shall be taken. But how comes the legislature to possess this right? It has been heretofore exercised. The vote upon the proposal for biennial sessions is a recent and marked instance. Did the constitution provide that such means should be resorted to, in order to determine the proper course of public legislation? If the constitution is a compact between "the shores, the counties and the people," how comes it that so important a feature was changed by a *popular* vote? The frequent convening of the legislature had been stated in the bill of rights,

to be a great preservative of freedom; and the constitution formed at the same period had indirectly provided for an annual session of the legislature. This legislation undoubtedly concerned the counties and cities. Why did they not vote as units, instead of losing their entire identity in the mass of a general ballot? However this may be, the right to take such a vote has now become a constitutional precedent. The undersigned entertain no doubt that the legislature had the right exercised in the case of the bill for biennial sessions, but they are happily released from the necessity of arguing the point by the precedent referred to.

If the people should desire a convention, the next inquiry is whether the Governor can issue writs for the election as provided for in the said bill. The act of 1836, chapter 197, sec. 13, provides "that the whole executive power of the State shall be vested exclusively in the Governor, subject, nevertheless, to the checks, limitations and provisions, hereinafter specified and mentioned." Now what is the executive power of the State? Clearly, wherever the Legislature has the right to order an executive act, the Governor may, very properly, be entrusted with its performance. The whole inquiry is, therefore, narrowed down to the simple question as to the power of the Legislature to provide for a convention, as specified in the Bill reported herewith.

The committee, who reported in 1847, triumphantly asked the friends of reform to show by what authority the Legislature could direct the assembling of the convention, provided for in the bill then reported to the House. It might be answered that the precedent set in the bill for biennial sessions, justifies so much of the bill submitted herewith, as provides for taking the sense of the people. If the strict construction of the committee of 1847 be correct, the Legislature had no right to look for guidance beyond the narrow limits of the two houses. In what section of the constitution is to be found the article which provides that the Legislature shall have power to pass a law taking the sense of the people upon any question whatever? If it was done in pursuance of the general belief, that it could not legislate wisely without information, then, as a matter of course, after taking an element of such importance as popular opinion into its councils, it could not in honor and conscience act otherwise than as that opinion dictated. If the Legislature had the right to call for the decision of so great an arbiter on such a question, it certainly has more reason to consult the same authority upon a matter of such moment as the summoning of a convention to reform the constitution of the whole State.

The undersigned have endeavored to show that the sole power of altering the constitution is not, by the fair construction of the forty-second article of the Bill of Rights, and of the fifty-ninth article of the constitution, vested in the Legislature. The concurrent and indefeasible rights of the people to change their form of Government also exists. The sole question is, whether it can be taken advantage of in any other manner than by revolution. The

Legislature has exercised the power of taking the popular vote upon questions, for the simple reason that unless a legal form was thus given to the utterance of public opinion, it could never have any definite and intelligible expression. Exactly the same principles which permits the Legislature to forestall the necessity for revolution by learning, in the most certain manner the public will, justifies it in convoking and clothing with legal forms an assembly delegated by the people, whose labors will effectually check, by their formal and regular expression, all discontent, or revolutionary movement. The undersigned think that the Legislature would not in fact, did it pass the bill presented as a part of this report go in any degree beyond the authority which it has heretofore exercised in taking the popular sense upon any proposal to change the constitution. The difference is not in the principle, but in the result and extent of its application.

In the case of biennial sessions, when the popular vote was recorded in favor of the change, the duty of the Legislature, as we have said before, became ministerial only. So far as the principle of the constitutional doctrine is concerned, what difference does it make whether the Legislature refers one, or fifty, points to the determination of the people? And since this reference is a submission of legislative power to the direction of the majority, the two houses reserving to themselves only the ministerial act of confirmation, the undersigned would inquire whether the Legislature has not, by so doing, conceded to the people of the State the right to control and modify the constitution by a popular vote thereon.

It is not enough to say that such votes are for *information* only. It is strange that delegates returned by their respective constituencies, are not able to say what those constituencies desire. There is always time enough to gain the required information; because an election takes place in the interval; and it is natural to conclude that a proposal to change the constitution, would have its influence in the selection of delegates and senators. If such information is not to be relied on, unless it takes the authentic form of a vote, and this vote is to be mandatory in its character upon the legislature, the undersigned see no reason for interposing the forms of a legislative sanction, between the popular will and its expression as a law. It is at best an idle ceremony, serving only to reduce the high and sovereign pretensions of that body, to an empty show of state and power.

If the undersigned are correct, in their conclusions, it would appear that there is ample reason for asserting that a vote may be constitutionally taken, upon the propriety of holding a convention, in the manner prescribed by the bill submitted to the House. It would, also, seem that the legislature may as legally direct that a convention shall be assembled to form a new constitution, as that a popular vote shall be taken upon the propriety of introducing a new feature into that instrument; since a new constitution is but the replacing of a number of old provisions by others, before unknown in the system. The single difference consists in the right to origi-

nate the amendment. For the undersigned contend that the essential confirmation of the change, is the popular vote in its favor, and not the mere ministerial act of the passage of the same law by a second Legislature.

Having once conceded this right of the people to direct constitutional amendments, the undersigned would inquire where the legislature can with propriety refuse it? Is the decision of the majority valuable upon one question, and worthless upon another,—an imperative law at one time, and an impertinence three years afterwards? Can the legislature say that it understands the public mind as to one part of the constitution better than it does as to another,—and that although it is doubtful whether it can safely decide as to biennial sessions, without providing for a popular vote, it can clearly express the public sense upon other and more vital points?

The right to originate an amendment in such a state of things is no check whatever upon popular reform. It would be a strange proposition that could not find one friend in the General Assembly. That person has the precedent of former reference to the decision of the people to sustain him, and if supported by that voice, however insignificant might be his place and influence, precedent would make his suggestion the organic law of the State.

The undersigned think that great credit should be accorded to the legislature for its desire to accommodate the constitution to the growth of public wants. But notwithstanding this wilingness on its part, they are still of opinion that the work of reformation would more wisely and speedily progress if it were entrusted to a body less distracted by local cares and party divisions, than the State Legislature. During some years past the time of this body has been materially taken up by the discussion of such propositions to the injuiry of private interests and the detriment of the public weal. The brief time, allotted by the law for the session, does not permit that regular, calm, undistracted deliberation, which questions of such importance must require.

The undersigned in conclusion, earnestly hope that the reasons which they have adduced will incline the house to give their bill a favorable consideration. It is so framed as to relieve all sections of the State from the fear of aggression. And they hope that while the smaller interests feel that they have been provided for with a consideration justly due to the influence, which they have always exercised in the legislation of the State, the larger and more populous sections will know that they can entirely confide for their protection, against the improper use of power, in the honor and integrity of the people of the whole State.

DANIEL S. BISER,
CHARLES J. M. GWINN,
HENRY D. FARNANDIS.

A BILL

Entitled, an act to provide for the taking the sense of the people upon the expediency of calling a Convention, to frame a new Constitution and Form of Government for this State, and to provide for the election of Delegates to such Convention.

Section 1. Be it enacted by the General Assembly of Maryland, That for the purpose of ascertaining the sense of the people of this State, as to the expediency of calling a Convention of delegates to be elected by the people, to frame a new Constitution and Form of Government, to be submitted to a vote of the people for ratification or rejection, it is hereby recommended to the legal voters of the State, that at the election of Governor of this State, to be held on the first Wednesday, eighteen hundred and fifty, and at the same places where said election is to be held, that every person entitled to vote in the election of said Governor, shall vote with reference to the question proposed by this act, by expressing in writing or in printed form, on the ballot he may cast, the words, "For a Convention," or the words "Against a Convention," as the case may be, and in case there should be any ballots without the designation hereinbefore prescribed, the same shall not be counted either for or against a convention, but a separate return of the same shall be made by the judges of election as aforesaid.

Sec. 2. And be it enacted, That it shall be the duty of the several judges of election of this State to receive, accurately count, and duly return to the Governor within days after the said election, the number of ballots given for or against the call of a convention, in the same manner as they return the number of ballots for the Governor of this State, and the laws regulating the returns for the said Governor, shall regulate, govern and apply to the vote recommended to be taken by the provisions of this act, and a judge or judges of the election failing to comply with the provisions of this act, shall be liable to the same penalties as he or they would be by the non-compliance with the existing laws of this State.

Sec. 3. And be it enacted, That as soon as the Governor shall receive the returns of the number of ballots cast in this State, for or against a convention, and if upon counting and casting up the returns as made to him by the judges of election as hereinbefore prescribed, it shall appear that a majority of the people of the State, are in favor of a call of a convention, he shall issue his proclamation ordering an election to be held in the several counties and the city of Baltimore, on the last Monday of November, eighteen

hundred and fifty, for delegates to the convention to frame a new constitution and form of government, in such manner and under such regulations as are hereinafter provided.

Sec. 4. *And be it enacted*, That the election to be held for delegates to the convention, as prescribed in the third section of this act, the legal voters shall proceed by ballot to elect delegates to the convention, whose qualifications shall be the same as those now required for a seat in the House of Delegates, and each county and city of Baltimore, shall be entitled to the same number of delegates to the convention, as they now have respectively in the House of Delegates.

Sec. 5. *And be it enacted*, That the laws relating to the election of Delegates to the Legislature, shall in all respects govern and apply to the election of Delegates to the said Convention.

Sec. 6. *And be it enacted*, That the convention assembling in accordance with the call of the people and this act of Assembly, shall meet in the city of Annapolis, on the first Monday of January, eighteen hundred and fifty-one, and the said convention shall continue in session from day to day, until the business for which they have convened, shall be fully completed and finished, and the compensation of the delegates to the said convention shall be four dollars a day, and the said convention shall have power to appoint such clerks and other officers, as may be deemed necessary to facilitate the transaction of the business of the convention, and to fix their compensation; and that the Treasurer of the State of Maryland shall pay upon the order of the President of the said convention, to each member thereof, the said sum of four dollars per day, as herein provided; and shall also pay to the said clerks or other officers, upon the order of the said President, such compensation as the said convention shall determine to allow.

Sec. 7. *Be it also enacted*, That if any vacancy occur in either or any of the several delegations hereinbefore provided for, by death or otherwise, that the said delegation or delegations in which said vacancy shall occur, shall have power to fill the same.

Sec. 8. *And be it enacted*, That the Constitution reported and adopted by the convention assembled as aforesaid, shall at the general election to be held on the first Wednesday in October, eighteen hundred and fifty-one, be submitted to the legal and qualified voters of this State, for their adoption or rejection, and the voters shall on their ballots, plainly designated, express their assent or dissent to the adoption of the Constitution, submitted to them by the following words, written or printed on their ballots, to wit: "For the new Constitution" or "Against the new Constitution," which said ballots shall be counted by the judges of the election, and the number of ballots given for or against the adoption of the said constitution submitted to the people by the convention, shall be returned to the Governor of the State of Maryland, by the judges aforesaid, within thirty days after the time of holding the election, and in case there shall be any ballots without the designation hereinbefore prescribed, the same shall not be

counted either for or against the adoption of the constitution, but a separate return of the same shall be made by the judges of election as aforesaid.

Sec. 9. And be it enacted, That in the case of the refusal or neglect of the judges of the election in any of the counties of this State, or the city of Baltimore or Howard District, to make the return of the votes cast for or against the adoption of the new constitution, in their respective counties, the city of Baltimore or Howard District, such judge or judges so refusing or neglecting, shall be liable to the penalty and forfeiture of the sum of five hundred dollars, to be recovered by presentment by the grand jury of the county, city or district in which said judge or judges, reside and on a conviction of such judge or judges for neglecting or refusing to make the return of the number of votes given for or against the adoption of the said constitution as aforesaid, he or they shall in the discretion of the court before whom his or their conviction may be had, be subject also to imprisonment in the county jail for the space of thirty days.

Sec. 10. And be it enacted, That any Senator or Representative in Congress, or State Senator, or members of the House of Delegates, shall be eligible to a seat in the convention to assemble as hereinbefore prescribed, without effecting the tenor of their respective offices, and that the only limitation or restriction upon those possessing the other qualifications for a seat of the House of Delegates, shall be that no one in the pay or service of the United States, excepting those as hereinbefore excepted, shall be eligible to a seat in the convention as hereinbefore provided for.

Sec. 11. And be it enacted, That when the Governor shall receive the returns of the number of ballots cast in this State, for the adoption or rejection of the constitution submitted by the convention to the people, and if upon counting and casting up the returns as made to him by the judges of election as hereinbefore prescribed, it shall appear that a majority of the legal voters of the State, are in favor of the adoption of the said constitution, he shall issue his proclamation to the people of the State, declaring the fact, and he shall take such steps as shall be required by the said constitution for the same to go into operation and to supersede the old constitution of this State.

Sec. 12. And be it enacted, That any act or acts or parts of acts, inconsistent with this act, be, and the same are hereby repealed.